and other labor-saving devices for the fiscal year ended June 30, 1922; to the Committee on Appropriations.

713. A letter from the Secretary of the Treasury, transmitting statement showing in detail what officers and employees performed travel on official business from Washington to points outside the District of Columbia during the fiscal year ended June 30, 1922; to the Committee on Appropriations.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. BYRNES of South Carolina: A bill (H. R. 13110) authorizing the Secretary of the Navy in his discretion to deliver to the Daughters of the American Revolution of the State of South Carolina, the silver service which was used upon the battleship *South Carolina;* to the Committee on Naval Affairs.

By Mr. BRITTEN: A bill (H. R. 13111) to provide relief for temporary and reserve officers of the United States Navy who were transferred to the regular service; to the Committee on Naval Affairs.

By Mr. IRELAND: A bill (H. R. 13112) to provide for the erection of a Federal building at Springvalley, Ill.; to the Committee on Public Buildings and Grounds.

By Mr. SWANK: A bill (H. R. 13113) for the purchase of a site and the erection thereon of a public building at Norman, Okla.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 13114) for the purchase of a site and the erection thereon of a public building at Sulphur, Okla.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 13115) for the purchase of a site and the erection thereon of a public building at Pauls Valley, Okla.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 13116) for the purchase of a site and the erection thereon of a public building at Purcell, Okla.; to the Committee on Public Buildings and Grounds.

By Mr. FROTHINGHAM: Resolution (H. Res. 457) requesting the Secretary of the Navy to furnish to the House of Representatives certain information regarding the scrapping of vessels of war; to the Committee on Naval Affairs.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. KING: A bill (H. R. 13117) granting a pension to James McCullough; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13118) granting an increase of pension to William Dotson; to the Committee on Pensions.

Also, a bill (H. R. 13119) granting a pension to Benjamin Franklin Brown; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13120) granting a pension to Amanda J. Johnson; to the Committee on Invalid Pensions.

By Mr. ROBSION: A bill (H. R. 13121) granting a pension to James Fletcher; to the Committee on Pensions.

By Mr. TAYLOR of Tennessee: A bill (H. R. 13122) granting a pension to Mattie Dunn; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13123) granting a pension to Mary Reynolds; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13124) granting a pension to Maggie L. Manley; to the Committee on Invalid Pensions.

By Mr. IRELAND: Resolution (H. Res. 456) authorizing the Clerk of the House to pay out of the contingent fund of the House to Florence A. Donnelly and Edna Radcliffe one month's salary as clerks to the late Hon. James R. Mann; to the Committee on Accounts.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

6497. By Mr. KISSEL: Petition of the Kern Co. (Ltd.), New Orleans, La., relative to the Winslow resolution relative to the Austrian property seized during the war; to the Committee on Foreign Affairs.

6498. By Mr. MAPES: Petition of William D. Bosman and 21 others, of Grand Rapids, Mich., for the abolition of the tax on small-arms ammunition and firearms in section 900, paragraph 7, of the internal revenue law; also petition of E. J. Benyan and 43 others, of Grand Rapids, to the same effect; to the Committee on Ways and Means.

SENATE.

SATURDAY, *December 2, 1922.*

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

O God, to whom all hearts are open and from whom no secrets are hid, we come and ask Thee for Thy grace that we may so live before Thee that in all the work begun, continued, and ended we may receive Thy approbation. Enable us always to walk in the light and so render to Thee acceptable service, always seeking the welfare of the country and all the interests that bind us to others beyond our shores. We ask in Jesus Christ's name. Amen.

The VICE PRESIDENT resumed the chair.

WILLIAM P. DILLINGHAM, a Senator from the State of Vermont, appeared in his seat to-day.

SENATOR FROM IOWA.

Mr. CUMMINS. Mr. President, I present the certificate of election of SMITH W. BROOKHART, Senator elect from the State of Iowa, which I ask may be read; and after the reading of the certificate, as the Senator elect is present, I ask that the oath be administered to him.

The credentials were read and ordered to be filed, as follows:

STATE OF IOWA,
Executive Department.

To the President of the Senate of the United States:

This is to certify that on the 7th day of November, 1922, SMITH W. BROOKHART was duly chosen by the qualified electors of the State of Iowa a Senator from said State to represent said State in the Senate of the United States for the unexpired term of Senator William S. Kenyon, resigned, said term ending on March 4, 1925.

Witness: His excellency our governor, N. E. Kendall, and our great seal hereto affixed at Des Moines this 28th day of November, in the year of our Lord 1922.

[SEAL.] N. E. KENDALL, *Governor.*

By the Governor:

W. C. RAMSAY,
Secretary of State.

The VICE PRESIDENT. The Senator elect will present himself at the desk and be sworn.

Mr. BROOKHART, escorted by Mr. CUMMINS, advanced to the Vice President's desk, and the oath prescribed by law having been administered to him, he took his seat in the Senate.

CALL OF THE ROLL.

Mr. UNDERWOOD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Ball	Glass	Nelson	Shortridge
Brandegee	Gooding	New	Smoot
Brookhart	Harreld	Norbeck	Spencer
Broussard	Harris	Norris	Stanley
Cameron	Harrison	Overman	Sterling
Capper	Heflin	Page	Sutherland
Caraway	Jones, N. Mex.	Pepper	Townsend
Culberson	Jones, Wash.	Phipps	Underwood
Cummins	Lodge	Pomerene	Walsh, Mass.
Curtis	McKellar	Ransdell	Walsh, Mont.
Dillingham	McKinley	Reed, Mo.	Warren
Fernald	McLean	Reed, Pa.	Watson
Fletcher	McNary	Robinson	Willis
George	Myers	Sheppard	

Mr. FLETCHER. I wish to announce that my colleague [Mr. TRAMMELL] is unavoidably absent, and that he has a general pair with the Senator from Rhode Island [Mr. COLT]. I ask that this announcement may stand for the day.

The VICE PRESIDENT. Fifty-five Senators having answered to their names, a quorum is present.

[A message in writing from the President of the United States was communicated to the Senate by Mr. Latta, one of his secretaries.]

THE JOURNAL.

The VICE PRESIDENT. The Secretary will read the Journal of the preceding session.

The Assistant Secretary proceeded to read the Journal of yesterday's proceedings.

Mr. CURTIS. I ask unanimous consent to dispense with the further reading of the Journal.

The VICE PRESIDENT. Is there objection?

Mr. UNDERWOOD. Of course, I would be delighted to agree with my friend from Kansas about almost anything except the Journal, but under the present status of public business I think it is necessary to have the Journal amended. The reading will have to be proceeded with for the present.

The Assistant Secretary resumed and concluded the reading of the Journal.

Mr. HARRISON. Mr. President, when the Senate adjourned on yesterday the unfinished business, I think, was a motion then pending to correct a mistake in the Journal of the preceding day, where the Journal had recited the fact that the Secretary had read the Journal of the preceding day, when, in fact, the Journal had been read by the Assistant Secretary of the Senate, Mr. Rose. So that very important question is pending and will have to be decided by the Senate at some time. Now, I note in the Journal which has just been read the statement:

The Journal of the proceedings of Wednesday, November 29, 1922, was read, and the President pro tempore having stated the question—

And so forth. In other words, the Journal leaves out the very important fact as to who read the Journal. On yesterday, I recall, and I am sure other Senators recall, that the Journal was read by the reading clerk, Mr. Crockett. I therefore move that the Journal which has just been read be corrected to state the fact. In order that the record may be preserved and that future generations may know precisely who did read the Journal of that day, I move to insert after the words "was read" the words "by the reading clerk, Mr. Crockett."

The VICE PRESIDENT. The question is on the motion of the Senator from Mississippi to amend the Journal.

Mr. HEFLIN obtained the floor.

Mr. OVERMAN. Mr. President——

Mr. HEFLIN. I yield to the Senator from North Carolina.

The VICE PRESIDENT. The Senator from North Carolina.

Mr. OVERMAN. Mr. President, when any considerable number of Senators are satisfied and conscientiously believe that any proposed legislation is unconstitutional, that it involves the integrity of the States and the liberties of the people, and if passed would undermine the very foundation stones of this Republic, I think they are fully justified in filibustering to prevent, if possible, a militant majority from roughshodding over a strong minority. We fully believe that the pending measure is unconstitutional; we fully believe that it is partisan in its character, and we also believe that it is sectional.

Nor, Mr. President, does it lie in the mouths of Senators on the other side of the Chamber to criticize a filibuster. They will filibuster on any occasion which they deem appropriate. We have not forgotten that only a short time ago the able and distinguished Senator from Utah [Mr. SMOOT], with remarkable vigor, from the setting of the sun to the rising thereof, all night long, spoke against time, against the then pending shipping bill. The Senator now says, "That is right." He does not deny having done so. He engaged in that filibuster to prevent the passage of legislation in preparation for our participation in the World War, which afterwards came, and which legislation was unanimously agreed to after that war began.

Mr. SMOOT. Mr. President, the Senator from North Carolina is wrong in the statement that he has just made.

Mr. OVERMAN. Well, what is the correct statement?

Mr. SMOOT. Senators on this side of the Chamber filibustered against the bill proposing to purchase the German ships which were interned after the declaration of war by our Government. It was against that we filibustered.

Mr. OVERMAN. But the Senator and his colleagues filibustered; that is the point.

Mr. SMOOT. Certainly; there is no doubt about that at all; I agree to that; and we were successful, too.

Mr. OVERMAN. And they were successful, as we hope to be in this instance.

Mr. SMOOT. And we saved the Government about $35,000,000 or $40,000,000.

Mr. OVERMAN. As the result of that filibuster, the Senators on the other side of the Chamber caused a waste of millions of dollars.

The distinguished Senator from Washington [Mr. JONES] on that occasion also spoke against time for eight hours in order to prevent the passage of the bill. The then aged Senator from New Hampshire [Mr. Gallinger], whom everybody loved, at that time the leader of the other side of the Chamber, also spoke for eight hours, and he was never afterwards a well man. His protracted speech on that occasion hastened his death.

So in this case, Mr. President, Senators on the other side of the Chamber are not justified in criticizing us for filibustering against the passage of a bill which involves a fundamental question, a question involving the very integrity of this Government, of the States, and also the liberties of the people.

The pending bill is sectional. It has been charged that it was written by a negro from the North; and that charge has not been denied; and it has been sent here for the purpose of being passed in order to corral the negro vote.

Mr. President, I wish to state here that the very Senators on the other side of the Chamber who were candidates for reelection and who were most active in trying to get this bill reported out of the committee and placed upon the calendar in order to hold the negro votes in their States have, every one of them, gone down to defeat. I tell my colleagues on the other side that whenever they endeavor to secure the passage of a sectional bill of this character, in order to degrade certain people in this country, they will always suffer for it afterwards. It is always a curse to them. The people of the United States will never stand for such legislation, as our history has heretofore shown, and as I expect to demonstrate has previously happened in this country when similar legislation has been pressed. Now we are confronted with this question. Here is a sectional measure. On its face it seems to be general, but it was practically admitted here the other day by the Senator from Iowa [Mr. CUMMINS] that it would not affect members of mobs and those who participated in riots in certain States of the North, such as Illinois, and in other sections of the country. That is admitted. Why is this bill brought here? Senators on the other side can not corral the negro vote by passing such a measure as this. The negro vote is just as apt to vote the Republican ticket as rain is to roll off a duck's back. I remember when I was a young man running for the first time for the legislature a friend of mine went to a grand old colored man who was as devoted to me as anyone could be in this world—I believe he would have died for me—and asked him to vote for me. The contest was close, but he said, "I can not vote for Marse Lee." He was asked why, and replied, "Because they would put me back in slavery."

The question was not argued with him, because he firmly believed that if he voted the Democratic ticket or if he voted for me he and his brethren would be put back in slavery. So the colored people are going to vote the Republican ticket in any event, and it is not necessary that the majority should pass such legislation as this in order to make them support Republican candidates.

This bill is brought forth for partisan purposes in the North. I repeat, however, that every one of the men who was a candidate for reelection and who advocated this bill went down to defeat in the recent election. I do not know whether or not their advocacy of such a measure as this had anything to do with the result, but I do know that all those who insisted on this partisan legislation and who were candidates for reelection went down to defeat. It is a measure designed to bring trouble to one of the fairest sections of our country.

Mr. President, there is no demand on the part of the negroes of the South for this proposed legislation. I have never heard of such a demand coming from them. The negroes in the South are happy and contented; they own property; they are educating their children; they are protected by the law as much as any other man is protected by the law in the States; and they are satisfied and want to be let alone, but those who seek to press the pending bill will not let them alone. They want to stir up strife again. This bill will merely put evil notions into the heads of some poor devils down there who will feel that they will have a license guaranteed by the Federal Government to commit awful crimes. The old white man will get out his Winchester rifle, which has been laid aside for so many years that it has become rusty, and be ready for any emergency, and where we have had quiet and peace there will be strife stirred up again.

Mr. President, whenever the Republican Party has undertaken to pass a measure such as this it has proved a curse to them. We have not had any such legislation proposed for thirty-odd years. This is the first occasion in all those years when a sectional bill has come before this body for consideration. Why is it desired to stir up sectional feeling again? Why are we not to be allowed to rest in quiet and peace and prosperity?

It is said that the negroes are deprived of their property and of their liberty; but that is not the fact, for in the South they have the same rights as and are protected equally with the white man. I remember 40 years ago, when I was little more than a boy, as a member of the legislature I aided materially, I am proud to say, in defeating a bill that proposed to take the money derived from the revenue collected in the shape of taxes on the white man and devoting it to the education of white children and taking the taxes derived from the property of the negroes to educate the negroes. That

might have been against the Constitution; in any event, it was unfair and unjust to the colored man, and I succeeded in defeating it. Since that time in North Carolina there has been no legislation seeking to discriminate in favor of the white man and against the colored man, but every time a dollar is appropriated for education or for any other purpose for white men the negro gets his share.

Mr. President, is this bill constitutional? That is the great issue here. I wish to go back to the fountainhead; I wish now to go back to the days which marked the inception of this great question. At that time when this question was brought forward it was marked by hatred and malice on the part of the party in power—I am not criticizing them—against that section where the people had suffered and were sorely stricken. During that era there were passed twenty-odd so-called reconstruction bills. Thanks, however, to the present majority party, every vestige of the reconstruction acts has been removed from the statute books since I have been a Member of this body. Why was that action taken? It was due to the better feeling which it was realized existed throughout the country and because the Republican Party, on account of those reconstruction acts 10 years after the war, saw itself go down in defeat. A great President from Ohio, Mr. Hayes, reflecting the public sentiment of this country, restored to the South their integrity; a Republican President put a Southern man in his Cabinet, and from that time until the force bill was introduced we had quiet and peace. When the force bill was passed by the House of Representatives, brave, patriotic, able Republican Senators from the West, sympathizing with the South and our condition, rose against their party and joined with us in a filibuster to defeat that iniquitous measure. The man who introduced it and those who supported it to-day in their hearts are sorry for their act and are ashamed of such attempted legislation. The men who helped us to defeat it are proud of their act, and their people are proud of their conduct in working for the defeat of that bill. So it will be in the case of the pending measure, which is a sectional bill. If the Republican majority shall succeed in passing it, they will live to see the day when they will be ashamed of their conduct, and their people will leave them at home, just as in the recent election they left at home those who had been here advocating that the Judiciary Committee report this bill to the Senate in order to hold the negro vote.

Mr. President, at that time, when there was so much hatred and bitter feeling in this country, Congress was led and controlled by a man whom we hated as cordially as any man in the world—old Thad. Stevens. He was the leader; he was the controlling man in all of the Congress. He was the author, it is said, of the fourteenth amendment. He was the author of these reconstruction acts; and yet I am going to show you by Thaddeus Stevens himself that he did not construe the fourteenth amendment as the Senator from California construed it. I am going to show you that when an amendment to the proposed constitutional amendment was introduced on the floor of the Senate to carry out just what the Senator from California and other Senators are contending for, the Senate voted it down because it was interfering with the integrity of the States. Men in the North, men in the East and the West, loved their States. They believed in preserving the integrity of the States, and that the police power that was in the States, guaranteed by the Constitution, should stay there.

I want to say this, Mr. President: I differ with the Senator from Iowa [Mr. CUMMINS]. I gathered—I may be mistaken; I love him, and I do not want to misinterpret anything that he says—but I gathered from him the other day that if he thinks the Supreme Court has decided a question wrongly he will not be bound by the decision.

Mr. CUMMINS. No, Mr. President; I did not intend to say anything of that kind. I think every good citizen must be bound by the interpretation of the Constitution as given by the Supreme Court.

Mr. OVERMAN. The Senator said he did not agree with the child labor law decision; and I suppose if the child labor law should come up here now, notwithstanding the decision of the Supreme Court, he would vote for it.

Mr. CUMMINS. Mr. President, the two questions are wholly different. Every good citizen must yield to the decisions of the Supreme Court of the United States in interpreting the Constitution; but if I think, myself, that an act is constitutional, I do not believe that it is the part of a bad citizen to present the question again to the Supreme Court of the United States, hoping that the conviction that I myself hold may finally receive the approval of that high tribunal.

Mr. OVERMAN. Where will that principle lead us? Every bootlegger, every man who commits lynching, and who thinks that the law is unwise or that the Supreme Court is wrong, will violate the Constitution because he thinks the Supreme Court is wrong; and when a man really wants to rape the Constitution in that manner he literally becomes a member of a mob.

Mr. CUMMINS. Mr. President, I do not justify on the part of a citizen any conduct in violation of the Constitution as interpreted by the Supreme Court. When we come to consider the duty of a legislator, if he believes that a proposed act is unconstitutional he ought not to vote for it, of course; but if he believes that upon rehearing the Supreme Court may change its view respecting the matter he is not guilty of bad morals or unethical conduct if he votes for the passage of a measure in order that it may be submitted to the Supreme Court.

Mr. OVERMAN. Therefore anybody who wants to pass a law will say "The Supreme Court is wrong; we will put it up to the Supreme Court again," just as it is said in this case "Let them pass on it again." A man who does that is a lawbreaker.

Mr. CUMMINS. That is just as I did in the case of the income tax law and just as the Senator from North Carolina did at the same time.

Mr. OVERMAN. I do not recollect my record on that law, but——

Mr. CUMMINS. I am only speaking generally. I do not remember specifically about the vote of the Senator from North Carolina.

Mr. FLETCHER. Mr. President——

The VICE PRESIDENT. Does the Senator from North Carolina yield to the Senator from Florida?

Mr. OVERMAN. I do.

Mr. FLETCHER. May I suggest that the position of the Senator from Iowa is that a question is never settled by the decision of the Supreme Court of the United States? We never can know the proper construction of the Constitution, because we may hereafter have a chance to bring up the question, and a change of personnel on the Supreme Court may change its decision. That, of course, leaves the whole question always open, and it is never settled.

Mr. CUMMINS. No, Mr. President; that is not quite accurate, either. This matter came up the other day when we were discussing the kind of doubt that a legislator should feel in order to compel him to vote against a proposed law on the ground that it was unconstitutional. I said that there were many doubts with regard to the ultimate decision of the Supreme Court upon a given question; that I would never vote for a proposed law if I believed it to be unconstitutional, but that if I had some doubt with regard to the outcome of litigation that might arise upon the statute when it reached the Supreme Court that was not the kind of doubt that would lead me to vote against a proposed law which I believe to be constitutional.

Mr. OVERMAN. Therefore the Senator believes that there are degrees of doubt. If he has some doubts, he will vote for the measure. If he has other doubts, he will not vote for it. He is put in that position; and when I referred to the fact that a man who votes for a bill that he has doubt about, instead of resolving it in favor of the Constitution and against the law, is a criminal, he said he had heard such things, but he did not believe in them. I am going to cite from one of the greatest law writers that ever wrote, and he is borne out by the other great law writers of this country on this subject. I am going to read something that I believe ought to be read at the desk when every Senator takes an oath and subscribes to it to support the Constitution of the United States and the laws of his country.

One of the great law writers of this country—and I think the Senator from Iowa [Mr. CUMMINS] will agree with me—is Mr. Cooley, a great western lawyer. What does he say on this subject?

> Legislators have their authority measured by the Constitution; they are chosen to do what it permits, and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution—

I call the Senator's attention to this—

> To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. A business agent who would deal in that manner with his principal's business would be treated as untrustworthy; a witness in court who would treat his oath thus lightly, and affirm things concerning which he was in doubt, would be held a criminal. Indeed, it is because the legislature has applied the judgment of its members to the question of its authority to pass the proposed law, and has only passed it after being satisfied of the authority, that the judiciary waive their own doubts and give it their support.

That is a treatise in regard to the Supreme Court and what they ought to do; and, incidentally, Judge Cooley says that any Senator who has a doubt about the constitutionality of this measure, and who votes for it, is a criminal. I say there is no Senator, layman or lawyer, who will go down to the bottom of this matter and investigate it but who will have doubts about it, as every member of the Judiciary Committee had. It is your duty to investigate it; and, having that doubt, a vote for it makes you a criminal in morals, and it is with you and your conscience what you will do.

Mr. HEFLIN. Mr. President, will the Senator yield to me?

Mr. OVERMAN. I yield.

Mr. HEFLIN. The great Lincoln, at Cooper Union in 1860, said:

> No man who has sworn to defend the Constitution can conscientiously vote for what he understands to be an unconstitutional measure, however expedient he may think it.

Mr. OVERMAN. Mr. President, you can not control the passions of men by law. There are lynchings in the South, deplorable as it is, and we all deplore it. There are lynchings in the North, in Ohio, in Indiana, in Illinois, in California. There are lynchings everywhere in the world. How are you going to control this condition? If a State can not control it, how can the Federal Government control it?

I noticed in the papers some time ago that they said of me that I was once present at a lynching. It is not true. I was not present; but I went to the jail doors, stood upon the jail steps, and pleaded as I never pleaded before for a howling mob to desist from the lynching. The men were lynched in the suburbs of the town. I was not present. All I did was to try to keep them from performing that horrible act.

A very prominent farmer had been beaten on the head with the butt end of an ax. His little boy, who slept by his side, was killed with the butt end of an ax. His poor wife was sleeping in another bed by his side with a little girl, and both of them were beaten in the head with this ax and killed. Two young girls, daughters, were asleep upstairs. The house was set on fire to burn them up. The people were aroused. They were mad, determined to lynch these men. The court was in session. I went to the judge as they gathered around the jail doors and asked the judge to go with me and stop the mob. He did, and they drove him away. The district attorney came and made them a speech. They threatened his life and ran him off. A Member of Congress was there, and they tried to kill him, and came very near killing him, but for some strange reason they heard me.

Did you ever stand before a mob, my countrymen, and look into their angry, horrible, crazy faces? If you have, you would understand it. I never want to see another scene of that sort. I pleaded with them for an hour, and they heard me; and finally the leader said, "Men, come on; let us go home and come back here to-morrow. If the court does not hang these men, we will."

I got down off the jail steps and led him away. The crowd followed. I went over to the judge and told him the lynching was over, and told a newspaper man who is here now that there would be no lynching; but in the meantime the military had been ordered out, after these men had left the jail, and it inflamed these men again. They did not fear the military. They did not fear anything. They were armed with dynamite, with axes, and with guns. They feared nobody, and this inflamed them; and they went back, tore down the jail, took these men out in the street, tried them in the street, acquitted three of them, and hung three.

Mr. President, I did not recognize one of these men, although I told them that I knew every one of them. I told the grand jury the next day that I did not recognize a man in the crowd. They were evidently from another county; and yet one section of this bill, which no man will contend is constitutional here on this floor, provides that when a lynching occurs in a county that county shall be assessed $10,000 in favor of the family of the deceased, and allows the Federal court to levy taxes upon the people to pay the amount. Does anybody say that section of the bill is constitutional? What would have been the result in my county? The innocent county that had nothing to do with the lynching would have had its taxpayers mulcted in the sum of $10,000.

Mr. President, in the Frank case Frank was taken from the penitentiary and carried through some 10 counties to the place where they lynched him. Under this bill, if the officers had failed to do their duty in the counties, you could have mulcted every county along the line, the county in which he was taken, the one in which he was hung, and the others, and assessed the people, and made them pay $10,000. Will anybody stand for such legislation as that? Have not Senators doubts in their minds as to the constitutionality of that? If they have doubts, what is their duty, as stated by every text writer upon the subject?

Mr. POMERENE. Mr. President, may I ask the Senator a question there?

Mr. OVERMAN. Certainly.

Mr. POMERENE. A moment ago the Senator made the statement that a law was clearly unconstitutional which sought to hold the county responsible in damages for a lynching.

Mr. OVERMAN. And giving the right to the Federal Court to levy the taxes.

Mr. POMERENE. That is what I wanted the Senator to make clear. Would the Senator contend that a State legislature did not have that power?

Mr. OVERMAN. I would contend that under the Constitution the legislature would have the right to levy whatever taxes they wished to levy within the Constitution's limitation, and whatever taxes they levied under the Constitution can be collected by the sheriff. But a Federal court has no right to levy taxes or to issue execution. They can issue a mandamus, but for what?

Mr. POMERENE. What I am seeking to get at is this: Does the Senator hold that a State legislature could not pass a law making the county responsible in damages?

Mr. OVERMAN. No; I take no such position as that, because my State did that very thing.

Mr. POMERENE. My State has done the same thing, and I wanted to have clearly in my own mind what the Senator's position was. Is he simply discussing this now from the standpoint of the Federal Constitution or from the standpoint of a State constitution or both?

Mr. OVERMAN. I am discussing it from the standpoint of the Constitution of the United States.

Mr. UNDERWOOD. If the Senator will allow me a moment to make a suggestion, I have no doubt the position of the Senator from North Carolina is that, so far as taxes levied by the State are concerned, they must be levied by State authority.

Mr. OVERMAN. Under the Constitution of the United States?

Mr. UNDERWOOD. Taxes levied by the Federal Government can only be levied by the Congress of the United States, and by no other authority.

Mr. OVERMAN. Under the Constitution; and I am discussing it from the constitutional standpoint.

Mr. CUMMINS. May I ask the Senator a question at that point?

Mr. OVERMAN. Certainly.

Mr. CUMMINS. Suppose a county maintains an unsafe bridge, and a traveler in passing over it meets his death under such circumstances as indicate want of care on the part of the county authorities. Does the Senator mean to say that the county can not be made liable for that injury?

Mr. OVERMAN. I maintain that the legislature gives to the county the right to levy such taxes as are necessary to pay the debts of the county; and the county having been sued, and a judgment having been gotten for the negligence of the county commissioners in not keeping up that bridge, of course the county can levy the taxes.

Mr. CUMMINS. Let me ask a further question, that having been answered very satisfactorily. Suppose a county issues bonds and does not pay them when they mature and a judgment is recovered against the county on account of the default of the county authorities?

Mr. OVERMAN. A mandamus can be gotten out.

Mr. CUMMINS. Can not a court compel the county to levy the taxes necessary to pay them?

Mr. OVERMAN. Yes; under the State constitution that can be done.

Mr. CUMMINS. Therefore, if one, under this act, shall recover a judgment against a county, is there any difficulty in securing the proper process to compel the county to levy taxes that will pay the judgment?

Mr. OVERMAN. Does the Senator from Iowa claim that a Federal court can levy taxes on the people?

Mr. CUMMINS. No. The court can compel the county authorities to levy the taxes, and that has been done many, many times in the case of county authorities, township authorities, and other governmental instrumentalities of lesser size than States. I do not think it has ever been determined that a Federal court can compel a State to levy taxes.

Mr. OVERMAN. I thought the Senator would agree to that. Now, I want to ask the Senator a broad, plain question. Does the Senator think this section of the bill is constitutional?

Mr. CUMMINS. I think it is constitutional. I said the other day, and I repeat now, that I am not so certain of the

constitutionality of these two sections of the bill as I am of other sections; but I believe they are constitutional, because it has been the habit among civilized countries for a very, very long time to impose a liability of this character upon municipalities which fail to enforce the law.

Mr. OVERMAN. The Senator's position is very different from that which he took before the committee. Of course, he has a right to change his mind. He is a great lawyer and a good man, and I have no criticism to make of him.

Now, I want to get to the fountainhead, to go back and see where this legislation began, who fathered it, what his view of it was, and what the intention of Congress was at that time, in those distressing hours, hours of bitterness and trouble and spite and hatred.

Mr. Stevens was the author of this amendment, as well as of most of the acts intended to humiliate, to oppress, and to degrade the South. Here is what Mr. Stevens said in arguing for the fourteenth amendment:

> The Constitution limits only the action of Congress and is not a limitation on the States. This amendment supplies that defect and allows Congress to correct the unjust legislation of the States so far that the law which operates upon one man shall operate equally upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree.

The law books are to the same effect, that this amendment does not enlarge the Constitution. It only tends to fetter and to hinder the States from making laws to discriminate against the colored man in favor of the white man in his property rights and in his personal rights.

Mr. CUMMINS. May I ask the Senator a question at that point, because it is very desirable to get his full understanding: Does he assert that Mr. Stevens claimed that this amendment applied only to legislation?

Mr. OVERMAN. I gather from that language he did.

Mr. CUMMINS. If he did so claim, the Supreme Court has overruled him many times.

Mr. OVERMAN. We will see about that.

Mr. CUMMINS. So far as the application of the amendment is concerned, it is conceded now, I think, by all lawyers that the amendment can be violated by executive and administrative officers as well as by the legislature of a State.

Mr. OVERMAN. The argument made by the able Senator from California, an argument as good as anybody can make, and the same argument now made by the Senator from Iowa, was made in Congress at that time, and Congress tried to do what these Senators say they can do now under the fourteenth amendment. They tried to amend the fourteenth amendment and put the language right in the amendment itself so that Congress should have this power given to it, as proposed by this bill. This was the language of the amendment introduced:

> Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens of the several States, and to all persons in the several States equal protection of the right of life, liberty, and property.

Does the Senator catch that? Is not that what he contends in the argument he makes? I am sure he does, and he has made an able argument. But I say to the Senator from California, the Senate voted that down and declined to put any such language in the Constitution, because they did not want that power given to Congress. Then Congress passed the words which are now found in the amendment in lieu of that proposed amendment.

Mr. SHORTRIDGE. Mr. President——

The VICE PRESIDENT. Does the Senator from North Carolina yield to the Senator from California?

Mr. OVERMAN. I yield.

Mr. SHORTRIDGE. I am listening with great respect and great interest to the argument of the Senator from North Carolina, and I hope he will not assume, as he goes on, that I yield assent to his position because I do not immediately interrupt him. I think it much better to remain silent until the Senator finishes; but I hope to have an opportunity to take up and respectfully make answer to some propositions which he is now stating.

Mr. OVERMAN. I understand that, Mr. President; it is always understood among Senators that that is so.

Before I get to the constitutional question again I want to state this fact: Only a few weeks ago a gentleman from Connecticut, a Northern State, and his sweet little wife and baby were traveling from Florida with a camping outfit and stopped at a little neighborhood place, and while sleeping there two brutes, negroes, went into the camp, shot the poor man, and both of them raped the woman.

Of course, the citizens were aroused that a stranger should come into their State and be treated so outrageously by these colored brutes, and more than a hundred men, prominent citizens, rose up, determined to lynch those negroes. They were aroused by the same passion I was talking about awhile ago. If a southern man, if a man from North Carolina, had gone with his dear wife and little baby and camped out in a little Connecticut town, and two brutes had come out from the bushes and shot the man down, and both of them raped the woman, I was wondering what the people of Connecticut would have done. Would they not have done just as the people of North Carolina did? Inflamed and aroused by such a horrible thing, they would have risen up, in California, in Iowa, or anywhere else where there is a red-blooded Anglo-Saxon white man living, and there would have been that same feeling of indignation and madness.

The sheriff got hold of the men before the crowd did; he jumped in a high-powered Packard machine and beat the mob to the penitentiary, some 75 miles away. Those men were not lynched but were afterwards hanged. I am just showing what men's passions are, and what will arouse them anywhere in the United States.

I saw in the papers that a little girl 13 years old, a beautiful child, was going along a country road, and a brute jerked her into the bushes, ravished her, cut her throat, and left her for dead. If a brown man in California had taken one of the little girls of that Sate out in the bushes and cut her throat and ravished her, I wonder what the red-blooded citizens, the brave people of California, would have done. They would have done just as the people did in the case I have cited.

So, Mr. President, I say you can not correct these things by legislation. It is in the man; it is in the human mind. The passions are such that you can not stop it. You can not stop it by a Federal court, you can not stop it by bayonets, you can not stop it in any way. What good will this bill do if it shall become a law? Let us look at that before I go on to the other question.

What is proposed to be accomplished by the measure? I asked the Senator from California [Mr. SHORTRIDGE] the other day if he could cite me to a single State in the Union that had not passed laws against lynching. He could not. Every State has done it. Why, Mr. President, in my State whenever a lynching occurs the judge and the district attorney go to the spot, and they investigate it. The judge issues bench warrants immediately and tries to find the guilty men. Could the Federal court do any more? Suppose the Federal court is given jurisdiction; the Federal court meets only once every six months. A juror is a juror whether he is in the State court or in the Federal court. The grand jury in the Federal court will have the matter under consideration some five or six months after it happens, and what will they do? They will do just like a grand jury in a State court. What would the petit jury do in the Federal court? It would do just like the petit jury in the State court.

What are you going to accomplish by this measure? Do you want to frighten our people and make them hate the Federal court? Do you want to let the colored man know that he has a license to commit these crimes? What is the purpose of it? What is your purpose? Certainly nothing can be accomplished by the Federal court that can not be accomplished by the State court. No man dares say the States have not done all in their power to stop it. No man dares say there is not as much indignation among the southern people as among the northern people. No man will state we have not done everything in every way possible to correct it. It is madness, it is lunacy, it is crazy men who do it, and it can not be corrected by giving the Federal court jurisdiction.

I want some one to tell me what the purpose of the bill is, what good it will do, what it can accomplish, what can be accomplished through the Federal court if the State court can not accomplish anything? In the lynching case about which I have spoken one of the lynchers was killed at the jail door by the sheriff and one was arrested and put in the penitentiary. What could the Federal court do more than the State court did? What can be accomplished by the bill?

We have one remarkable case that comes from Alabama, the lynching case known as the Riggins case, about which we have heard so much. I shall read from the text in that case, so we can know exactly the facts in the case. In its various branches the case has gone to the Supreme Court several times. I read:

> Each of the counts alleges, in substance, that Maples, a citizen of the United States, was, at the time of his murder, lawfully confined by the sheriff of Madison County, State of Alabama, in the jail thereof, to answer the charge of murder under the laws of the State of Alabama; and that the sheriff and a detachment of the Alabama

National Guard, which he had summoned to his assistance, were endeavoring to safely keep Maples, to prevent the conspirators from hanging him, that he might have a trial according to law; and that the conspirators, in the city of Huntsville, within the jurisdiction of the court, went upon the highways and streets of the city of Huntsville on September 7, 1904, and murdered Maples by hanging him by the neck until he was dead, in order to prevent his enjoyment of the rights and privileges named in the several counts. Some of the counts allege that Maples was a negro citizen, and the conspirators who formed the conspiracy and committed the murder were white men, and that they were moved to the conspiracy and acts done in pursuance thereof, because Maples was a negro, with the intention, on that account, to deprive him of the rights, privileges, and immunities specified in the counts. All the counts allege that the conspiracy and acts done in furtherance of it were "to injure, oppress, threaten, and intimidate" Maples in the enjoyment of a right, privilege, or immunity "secured to him by the Constitution and laws of the United States," specified, respectively, in the counts as follows: (1) The right, privilege, and immunity secured to him under the Constitution and laws of the State of Alabama to be tried by due process of law, and acquitted, if innocent, and punished, if found guilty, in the courts of the State of Alabama. (2) The right, privilege, and immunity to have the State of Alabama, acting by and through its officers, to afford him a trial by due process of law, and to be held harmless if innocent, and to be punished if guilty, only after trial in the courts, upon accusation of crime preferred against him, when he was in the custody of the officers of the law of the State of Alabama (134 Federal Reporter, 404, 405).

Without reading further, I want to say that before the bill is enacted into law I shall be prepared to read a good deal from the law books. I may not have the vigor and the intellect of my friend from Utah [Mr. SMOOT]. I do not think I shall try to speak all night as he did in as remarkable a performance as I ever saw in this Chamber. He did not read a word, and the most remarkable thing about it was that he stuck to his subject. It was the most remarkable performance I ever knew of, a man speaking from sundown until dawn without reading from a book or anything else, and all the time sticking to his subject. It was the greatest performance I ever saw in my life. He was filibustering. He admits it. He was speaking against time. He admits it. He will not criticize us for this filibuster, I know. He has not done it and he will not do it.

But I want good men like the Senator from Utah, in the face of what Judge Cooley and other writers say, to remember the time when he took his oath here in the Senate. He believed in the sacredness of that oath, and I know it. I shall be very much surprised if the Senator from Utah votes for the bill. I do not believe he will do it. Other Senators will not do it when they learn what the Supreme Court has said upon this great question.

In the case to which I have referred not only the sheriff but the military was called. The military could not stop it. The sheriff could not stop it. Neither could they have stopped it if the Federal court had had jurisdiction and been there. That brings me back to my question. What will the Federal court do about it? Does anyone suppose, if they go on lynching where the district attorney is present, that our people will stop because the Federal court may have jurisdiction in the matter? The Federal court can call out the military, and an army may be sent down there as was done in 1868 and 1869. But who was sent down there? Most of them were western soldiers, kindly, patriotic men, who carried the bayonet down there, but they sympathized with our people, and those laws could not be enforced with the army that was sent down there, because the army sympathized with us. That is one reason why we repealed all such provisions of the law.

There was another branch of this very remarkable lynching case brought before the Supreme Court in which the question of the fourteenth amendment arose, and the Supreme Court discharged the men because they had no jurisdiction. Then came another one of the lynchers whose name was Powers. Judge Jones, of Alabama, a very great judge and a very great lawyer, concluded that the men were within both the amendments. He made the same argument that is made here by the Senator from California, and the very same argument that will be made here by other Senators, because he laid down their side of the case. He did not decide the case against the State. However, he gave his views, and he made the argument hoping that he would get the Supreme Court to reverse his decision. He said in his opinion that he was bound by the question decided in the Hodges case, and therefore he decided against the Government, but at the same time argued the question very ably, as ably as anybody could do, on the side proposed by the Senator from California and others. But what did the Supreme Court do? The district attorney appealed the case from the Federal court in the State of Alabama to the Supreme Court of the United States. In making up the appeal the district attorney included in the papers sent to the Supreme Court the argument made by Judge Jones. He set out in full the great argument made by Judge Jones on this question. The case came to the Supreme Court, and what did the Supreme Court do? Why, Mr. President, they treated it absolutely with contempt, as I shall show. When the case came up on appeal from Judge Jones's decision, the defendant did not have a representative in court; nobody representing him at all. The Attorney General appeared for the Government and Assistant Attorney General Fowler also appeared for the Government. There were no briefs filed for the defendant at all.

What did the Supreme Court do? Strange to say, after hearing the Attorney General, after hearing Assistant Attorney General Fowler, after reading Judge Jones's decision in the case, they merely said:

> Judgment is affirmed on the authority of Hodges *v.* United States (203 U. S.).

The Supreme Court did not even consider the matter because they had already decided the question in the Hodges case.

Now, the Attorney General and the Assistant Attorney General came up with this great opinion rendered in the case by the trial judge, the defendants were not even represented, and yet the Supreme Court per curiam gave the decision instead of writing an opinion. Then came the Hodges case, in which the opinion was delivered by Mr. Justice Brewer, one of the greatest judges that ever sat on that bench. It would take some time to read the entire opinion, but Justice Brewer went into the question fully as to both the thirteenth and fourteenth amendments. Justice Brewer said:

> That prior to the three post bellum amendments to the Constitution the National Government had no jurisdiction over a wrong like that charged in this indictment is conceded; that the fourteenth and fifteenth amendments do not justify the legislation is also beyond dispute, for they, as repeatedly held, are restrictions upon State action, and no action on the part of the State is complained of. Unless, therefore, the thirteenth amendment vests in the Nation the jurisdiction claimed the remedy must be sought through State action and in State tribunals subject to the supervision of this court by writ of error in proper cases.
>
> In the Slaughterhouse cases (16 Wall. 36, 76), in defining the privileges and immunities of citizens of the several States, this is quoted from the opinion of Mr. Justice Washington in Corfield *v.* Coryell (4 Wash. Cir. Ct. 371, 380):
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> "The inquiry," he says, "is what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have at all times been enjoyed by citizens of the several States which compose this Union from the time of their becoming free, independent, and sovereign. What these fundamental principles are it would be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole."
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> And after referring to other cases this court added (p. 77):
>
> "It would be the vainest show of learning to attempt to prove by citations of authority that up to the adoption of the recent amendments no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection beyond the very few express limitations which the Federal Constitution imposed upon the States, such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions the entire domain of the privileges and immunities of citizens of the States as above defined lay within the constitutional and legislative power of the States and without that of the Federal Government."
>
> Notwithstanding the adoption of these three amendments, the National Government still remains one of enumerated powers, and the tenth amendment, which reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people," is not shorn of its vitality. (203 U. S. Repts. 1–14.)

In passing, I desire here to say that I am proud of my State of North Carolina. That State did not go into the Union at the same time that the other States did. George Washington was elected President, but North Carolina was not in the Union. Why? Because the people of North Carolina were jealous of their rights—local self-government—and of the rights of her people. They did not go into the Union until the 10 amendments had been adopted to the Federal Constitution. It was not until November 21, 1789, that North Carolina ratified the Constitution. The tenth amendment to the Constitution provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Our claim is that there has been no delegation of power in the Constitution to the General Government to jusify the passage of such a bill as this. No such power has been given to the General Government. My argument has been made to prove that. At the time of the adoption of the fourteenth amendment to the Constitution, when an amendment was offered to it in this body proposing to grant to the General Gov-

ernment the power contemplated by the pending bill, it was opposed even by Thad Stevens, and Congress voted it down; Congress would not even consider it. That action ought to be conclusive so far as the pending bill is concerned.

Mr. SHORTRIDGE. Mr. President——

The PRESIDING OFFICER (Mr. STERLING in the chair). Does the Senator from North Carolina yield to the Senator from California?

Mr. OVERMAN. I yield.

Mr. SHORTRIDGE. I am assuming that the Senator from North Carolina has not forgotten that his State—in which State, by the by, my grandfather was born——

Mr. OVERMAN. That is why the Senator from California has such good blood in his veins.

Mr. SHORTRIDGE. That North Carolina, which now, speaking through its great Senator, takes its stand behind the fourteenth amendment, rejected the fourteenth amendment with scorn and defiance when it was first proposed, and that it cast in its legislature but 11 votes in favor of the ratification of the amendment.

Mr. OVERMAN. I recollect that Indiana and New York and Ohio all rejected that amendment. The fact is that Francis P. Blair stood upon the floor of the Senate and stated that the fourteenth amendment was adopted by fraud and by force; by force used on the Southern States, because those States were then in the hands of the Union Army; and by fraud, because as to other States, after the amendment had been adopted by the legislatures which were then in existence, legislatures which met shortly afterwards repudiated what the previous legislatures had done and took contrary action; but the Supreme Court held that the amendment having already been adopted by those States such action could not be rescinded.

Mr. SHORTRIDGE. If the Senator will pardon me, the point I am making—if it be a point—is that the State of North Carolina, which has been very jealous of the liberties of its people, and rightly so, in point of historic truth, at first refused to ratify the fourteenth amendment, though that State later ratified the amendment and by means that I purpose to explain.

Mr. OVERMAN. The Senator from California states the history of the matter correctly; but I wish to say to him that other States of the North and of the West took the same action as did North Carolina but tried subsequently to repudiate it. Indiana, for example, did so. The Senator from California knows the history of those times. Subsequent legislatures passed acts stating that the action by preceding legislatures was not expressive of the wishes of the States, and that they would rescind such action; but the Supreme Court decided that such action once taken and the amendment once adopted could not be repudiated.

So far as this matter is concerned, I repeat, North Carolina was the last State to go into the Union.

Mr. SHORTRIDGE. If the Senator will pardon me, I did not wish to single out North Carolina and to put any stigma on her; I did not mean it in that sense; but it might be well here for the record to cite the action of certain Southern States, because it has a bearing, I think, ultimately upon the fourteenth amendment, what the fourteenth amendment was, what it attempted to accomplish, and what it did accomplish; namely, the fourteenth amendment historically and legally made citizens out of the negroes of America. In the legislatures of Louisiana, Mississippi, and Florida the fourteenth amendment did not receive a single vote; in South Carolina it received only 1 vote; in Virginia only 1 vote; in Texas it received only 5 votes; in Arkansas it received but 2 votes; in Alabama it received 10 votes; in North Carolina it received 11 votes; and in Georgia it received only 2 votes. That is the record.

Mr. OVERMAN. The Senator from California reads the record, and I have no doubt about it; I do not dispute the record. I am glad the Senator has quoted it. The Senator is familiar with the conditions prevailing in those days; but I am here to say to the Senator—and he knows it—that many people believe that the fourteenth amendment was never legally adopted by anything like three-fourths of the States.

Mr. SHORTRIDGE. But, of course, the true theory was, as held, that the Southern States had never succeeded in getting out of the Union, and, therefore, it was necessary to count them in getting three-fourths of the States in order to ratify the amendment.

Mr. OVERMAN. The Supreme Court held that those States were always in the Union.

Mr. SHORTRIDGE. Certainly, and therefore that they had to be consulted in the matter of ratifying the fourteenth amendment.

Mr. OVERMAN. Yes.

Mr. SHORTRIDGE. But when that amendment was first proposed, what I have read was the record of the then existing legislatures of those several States.

Mr. OVERMAN. I again state that Francis P. Blair, of Missouri, standing right where I am now standing, charged upon the floor of this body that the fourteenth amendment was adopted by fraud and force; force which was exercised by the General Government against the Southern States, because those States had just emerged from the war and were under the control of the Union Army; fraud, because such States as Indiana, and, I think, also Ohio and New York, had rushed the adoption of the fourteenth amendment through the then existing legislatures, although the people had held an election and elected new legislatures upon that question, and notwithstanding the amendment had been adopted by the preceding legislatures, the new legislatures when they met repudiated the action of their predecessors and refused to adopt the amendment. As I stated a moment ago, however, the Supreme Court set aside the action of the subsequent legislatures and stated that they could not repudiate an amendment after it had once been ratified. That is the history of the ratification of that amendment. But, Mr. President, this is far afield from the line of discussion I intended to pursue. I merely mention it in passing to show what North Carolina did when the Constitution was adopted and the attitude she took as to the reserved powers of the States.

I wish also in passing to refer to the fact that North Carolina was the last State to go out of the Union. When the question of secession was first submitted to her legislature in February she voted against it, and it was not until Abraham Lincoln, who put in his Cabinet a North Carolinian, John A. Gilmer, called for 75,000 troops to fight her southern neighbors that North Carolina went out of the Union; but after she had seceded in the war which followed she lost 40 per cent of her population. At that time there were in the State only 112,000 voters, but North Carolina furnished 126,000 brave soldiers to fight for southern rights.

Mr. President, I am reminded here of what the late Senator Foraker, of Ohio, told me sitting in this Chamber. He said while he was coming through North Carolina with Sherman's army, which had been burning the houses of citizens in South Carolina, a great many men came out from time to time, claimed that they were Union men, and asked protection. Mr. Foraker went on to say that he saw standing in front of his country home an old man who looked to be about 80 years old. General Slocum, on whose staff Mr. Foraker was serving, said "Foraker, yonder is another one of those 'Union' men. I will ride up and see." He rode up and said, "My friend, you were a secessionist, were you not?" The old man replied, "No; I was not a secessionist; I thought our troubles ought to have been settled without war, and I voted against secession." Then he was asked, "You are a Union man?" Mr. Foraker said the old man seemed to rise up 2 feet; fire came into his eyes, and he said, "Union man; no, sir; when my State went out of the Union I went with her; two of my boys to-day are fighting in her behalf, and I honor them and stand by them. I am a damned rebel; that is what I am—a damned rebel."

Slocum said, "Foraker, put a guard over that man's property; protect it; he is a brave man and he is telling the truth." That old man, who was of Scotch descent, told the truth about his position. He was against the war, but when his State went out of the Union he believed his first duty was to his State, as did other citizens of the South and as they were taught under the Constitution, and so he went with her.

That is also very far afield from the question which the Senator from California and I were discussing, but I am proud of my State and I thought I would relate here upon the floor a little history that is not known.

Mr. President, I desire to refer again to the Hodges case. I have not much time and I do not wish to interfere with the ceremonies which are to take place a little later.

Mr. SHORTRIDGE. From what volume is the Senator reading?

Mr. OVERMAN. I am reading from the Hodges case.

Mr. SHORTRIDGE. I am familiar with the case, but from what volume is the Senator reading?

Mr. OVERMAN. The case is found in 203 Supreme Court Reports, and I have been reading from pages 16, 17, and so forth. I read further from that case:

> One thing more: At the close of the Civil War, when the problem of the emancipated slaves was before the Nation, it might have left them in a condition of alienage, or established them as wards of the Government like the Indian tribes, and thus retained for the Nation jurisdiction over them, or it might, as it did, give them citizenship. It chose the latter. By the fourteenth amendment it made citizens of all born within the limits of the United States and subject to its

jurisdiction. By the fifteenth it prohibited any State from denying the right of suffrage on account of race, color, or previous condition of servitude, and by the thirteenth it forbade slavery or involuntary servitude anywhere within the limits of the land. Whether this was or was not the wiser way to deal with the great problem is not a matter for the courts to consider.

Mr. FLETCHER. Mr. President, did the Senator say that he was reading from the case reported in Two hundred and third United States, at page 1?

Mr. OVERMAN. I am reading from page 20.

Mr. FLETCHER. The decision begins on page 1, I think.

Mr. OVERMAN. Yes. I continue the quotation:

It is for us to accept the decision, which declined to constitute them wards of the Nation or leave them in a condition of alienage where they would be subject to the jurisdiction of Congress, but gave them citizenship, doubtless believing that thereby in the long run their best interests would be subserved, they taking their chances with other citizens in the States where they should make their homes.

That, Mr. President, was not the point which I wish to bring out. However, the court in this case stated that the fourteenth amendment did not fetter or hinder in any way the States or deprive them of their police powers; that it did not enlarge the Constitution but was a prohibition upon the States passing discriminatory laws in favor of the white man and against the black man. That is what Mr. Stevens said. That is what Congress said at the time—that they had no intention of depriving the State of any of its rights or police powers or of giving Congress the right to legislate in favor of one class and against another.

Mr. FLETCHER. Mr. President, may I interrupt the Senator to inquire whether he has referred to the case of United States *v.* Harris (106 U. S. 629)? That seems to be directly in point on this question.

Mr. OVERMAN. Yes; I have that case before me now. That was another lynching case, as I recollect. It came up from Tennessee. That was a case in which the court especially referred to the fourteenth amendment in this language:

The purpose and effect of the two sections of the fourteenth amendment above quoted were clearly defined by Mr. Justice Bradley in the case of United States *v.* Cruikshank (1 Woods, 308), as follows: "It is a guaranty of protection against the acts of the State government itself. It is a guaranty against the exertion of arbitrary and tyrannical power on the part of the government and legislature of the State, not a guaranty against the commission of individual offenses"—

The court decides that the fourteenth amendment does not have anything to do with individuals; it deals only with the State itself and is a prohibition against the State exercising its discriminatory powers against the colored man in favor of the white man—

"and the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend"—

Listen—

"does not extend to the passage of laws for the suppression of crime within the States."

I will say to the Senator from California that the Supreme Court in this case exactly carries out what appears in the record of Congress, that this does not extend in any way to the right to give Congress the power to legislate against individuals.

"And the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend to the passage of laws for the suppression of crime within the States. The enforcement of the guaranty does not require or authorize Congress to perform the duty that the guaranty itself supposes it to be the duty of the State to perform and which it requires the State to perform."

Every State thinks it is its duty to protect the individual citizen, whether he be white or black, brown or yellow. It gives them all the same protection.

The Senator from California answered this question to me the other day. He said his argument is all based upon the fact that the States have not done their duty in protecting the colored race. It is all based upon that. Therefore he is assuming a fact. It is not right to assume a fact.

Mr. SHORTRIDGE. No, Mr. President, with the Senator's permission; that is not my position. I forget color entirely in this argument. My position was and is that it is where and only where the State either affirmatively or negatively by nonaction has deprived any man, white or black, native or naturalized, of his rights to life or to liberty or to property, or has affirmatively or negatively by indifference, neglect, or failure to enforce law denied to him the equal protection of the laws, then it is that the Nation may step in, and should step in, and protect him by punishing those who have violated his constitutional rights. That is my position.

Mr. OVERMAN. I am glad the Senator has made that statement, because I did not make it as clearly as he has.

Mr. SHORTRIDGE. That is, and always has been, my position.

Mr. OVERMAN. Therefore, in making that argument the Senator is bound to assume that some State, by action or nonaction, has failed in its duty to protect one citizen against another.

Mr. SHORTRIDGE. It is conceivable that the State might enact laws as against certain offenses, calling them crimes, and then fail to execute the laws; or, as in the case of California, where the municipality of San Francisco passed a certain laundry ordinance, upon the face of that ordinance it was equal and fair and applicable to all, but, as the Supreme Court of the United States said, looking through form to substance, it was seen that the ordinance was designed to operate against one class only, and was not made applicable to all, wherefore the Supreme Court of the United States held the ordinance void.

Mr. OVERMAN. Can the Senator show me or point me to a single act of a single Southern State or any other State that has passed or failed to pass any act whereby its citizens, white or black, brown or yellow, were deprived of protection by action or nonaction? Can he show me anything of that sort? If so, then his argument is good, though not from a constitutional standpoint; it is bad so far as the Constitution is concerned; but the Senator's argument must be based upon an admitted fact or a proved fact.

Mr. SHORTRIDGE. Certainly.

Mr. OVERMAN. Now, the Senator admitting that, I want him to show me and to tell me, if he can, where any State, by action or nonaction, has deprived any citizen of his right to life, liberty, or property?

Mr. SHORTRIDGE. I will endeavor to do so; but may I throw out this idea right here: I do not look upon the Federal Government as an alien thing, as a foreign force. I look upon the Federal Government as being as friendly toward me, as friendly toward my State and yours, as the State government. I do not regard legislation of this kind as hostile, or in design hostile, to a given State or to the people of a given State. I have said, and have repeated, that so far as I am concerned I look upon legislation of this character as in aid of, in cooperation with, the good people of each and every State; and I personally feel in a sense grieved that Senators appear to look upon legislation of this kind as hostile to a given State; wherefore they invoke the powers of the States, and discuss the police power and the reserved rights of the States and the limited delegated powers of the Federal Government.

I grant that the Constitution of the United States is a delegation of power; I grant that the State constitutions are reservations of power; but what I think, and what I trust some day we will all agree upon, is this: That we have one country, made up of 48 States, and that whether Congress, here sitting, is speaking for the Nation, or a legislature in North Carolina is speaking, both are speaking for the benefit not of the State as such, as an entity, but for all the people of Nation and State.

When the Senator argues that this proposed legislation would be abortive, that it would accomplish no good, that it could not be enforced, and that, if enforced, it would cause more harm than good, I listen with the utmost attention.

Mr. OVERMAN. I am satisfied the Senator would.

Mr. SHORTRIDGE. I would, because my purpose, speaking for myself, is to help not only the individual who might be assailed or deprived of life or liberty without due process of law, but to help the people of the States; for I can not believe that any State or the representative of any State approves of lynching. We must stand as adamant against that monstrous proposition, or else we have reverted to barbarism, and we invite the overturning of our courts and our laws, our very civilization. We must all stand up for the law and the institutions of our country.

Mr. OVERMAN. We all agree with the Senator in that respect; but the trouble about the Senator is that he does not understand this question, probably, and he knows, if he has heard what is going on in these corridors, that this legislation was really promoted by and the propaganda was for the Negro race in the South. That is understood. It was to hold the negro vote in the next election.

Mr. SHORTRIDGE. That does not operate with me.

Mr. OVERMAN. I know it does not.

Mr. SHORTRIDGE. It does not.

Mr. OVERMAN. I know. I say I do not agree with the Senator's position, but the Senator knows that, too.

Mr. SHORTRIDGE. No; I do not.

Mr. OVERMAN. At least, the Senator has heard that.

Mr. SHORTRIDGE. I do not admit that to be true. If an evil exists in my State, I would have it cured.

Mr. OVERMAN. North Carolinians and Californians all love their Government, and want to stand by the Government, and want to treat everybody alike, and that is all we are

asking—that California stand by us. Why, I remember that the California Senators, when they had their great social question to deal with in their own State, stood by the South, if you may call it such, in their great problem, and helped us out; and although I admit that the Senator is a patriotic, brave man, a great speaker, eloquent and able, I was a little bit surprised when the Senator from California did not follow the lead of his great predecessors here when they sympathized with us and took part with us. They would have been here aiding in defeating the force bill, aiding in defeating this bill, because they believed, as the Senator does, that we are all one great people, loving the Union and wanting to do right by every man and every citizen, white and black, and to see that they all have the same rights and privileges in their person, in their property, and in their liberty.

Mr. FLETCHER. Mr. President, may I suggest to the Senator from California this thought further than what the Senator from North Carolina has said: The Senator from California bases the theory of this bill upon the proposition that the States have failed or neglected to enforce their laws, and therefore the Federal Government must come in to help them out in that situation. Now, for what purpose? What is the ultimate aim and object of the bill? It is to prevent the commission of certain crimes within the States; namely, the crime of lynching. That is the purpose of the bill, and that is the object of it. In the decision which the Senator from North Carolina has just read—United States against Harris—the Supreme Court lays down the proposition broadly, and holds clearly and expressly that the fourteenth amendment does not give to Congress the authority or the power or the right to legislate with respect to the commission of crimes in the States. That is the ultimate principle we reach; and the Supreme Court has decided definitely and clearly in that case that Congress has no power to pass legislation for the purpose of suppressing crime within the States. That is a State function, and that is one of the reserved rights of the States.

Mr. OVERMAN. Before the Senator from California begins his answer, may I say——

Mr. SHORTRIDGE. Yes; it would take me too long to answer that question in a word. I hope to analyze the Harris case later on.

Mr. OVERMAN. Let me say that I asked the Senator a question, and he has not answered it. He spoke for 10 minutes and very ably, but he did not answer it.

Mr. SHORTRIDGE. I did not? I beg the Senator's pardon. What was the question?

Mr. OVERMAN. I want to know if any State in the South, in the North, in the East, or in the West has failed in any of its duties to its citizens by action or by nonaction?

Mr. SHORTRIDGE. I think I can answer that, and I shall answer it, though I shall be very sorry to lay upon the record here the facts in respect to the enforcement of the laws against lynching in the several States. I will be sorry to do it.

Mr. OVERMAN. I do not blame the Senator. Let him do it.

Mr. SHORTRIDGE. Because I am a friend of the States.

Mr. OVERMAN. The Senator does not understand my question. Suppose there have been many lynchings, as there have been, as we all know, thousands of them——

Mr. SHORTRIDGE. There have been.

Mr. OVERMAN. I want to know, notwithstanding that fact, if it is a fact, if any State in this Union, South, North, East, or West, has ever by nonaction or by action deprived any man, black or white, of his rights as a citizen, in his person, his property, or his liberty?

Mr. SHORTRIDGE. I think so, in hundreds and thousands of cases; and when I say that, I wish to be understood as saying and meaning, I think there have been monstrous crimes committed, which we will call lynchings, and that there has been no punishment of those guilty of those crimes. Answering the Senator's question directly, I have said, and I repeat, that even though the laws of a given State may denounce lynching, the State laws have not been enforced, and the men guilty have not been punished, and there have not been that diligence, that apprehension, that pursuit, that prosecution, that conviction, that punishment which ought to have occurred.

Mr. OVERMAN. I do not think the Senator can show that.

Mr. SHORTRIDGE. I think I can show it.

Mr. OVERMAN. The Senator can show in his own State and every State of this Union, in Illinois, in Indiana——

Mr. SHORTRIDGE. Truly, it is not confined to one State.

Mr. OVERMAN. In fact, speaking of some of these States, Indiana and Illinois, when a mad mob is aroused—and they do get mad and you can not control them—there is this difference between the man of the North and the man of the South——

Mr. SHORTRIDGE. We are of one blood, cavalier and Puritan. We are not so different.

Mr. OVERMAN. We in the South like the colored man. When a brutal crime is committed by a colored man, we try him, or may lynch him. In some Northern States they do not lynch the man who commits the crime; they kill every man they see who has a black skin.

Mr. CURTIS. Mr. President——

The PRESIDING OFFICER (Mr. NEW in the chair). Does the Senator from North Carolina yield to the Senator from Kansas?

Mr. OVERMAN. I yield.

ORDER FOR RECESS.

Mr. CURTIS. If the Senator will yield, I would like to submit a unanimous-consent agreement before I ask for a quorum in order that we may attend the funeral services in the House. I ask unanimous consent that when the Senate adjourns to-day it adjourn to meet at 10 o'clock Monday morning next.

Mr. UNDERWOOD. With the understanding that when we return from the funeral services the Senator will ask for a recess immediately, I do not object.

Mr. CURTIS. I said an adjournment, but we could take a recess and probably save time.

Mr. UNDERWOOD. With the Journal of yesterday's proceedings pending, I have no objection to taking a recess when we come back from the Hall of the House.

Mr. CURTIS. Then, when we return from the House, it is understood that there will be a recess taken until 10 o'clock Monday morning. I ask that by unanimous consent that order be made.

Mr. OVERMAN. I would like to finish my argument, because I have a great many authorities here to show that the Dyer bill is unconstitutional and is a flagrant invasion of the Constitution; but, of course, I yield for the unanimous-consent agreement and the further proceedings, hoping that at some future time I may have an opportunity to conclude my argument.

The PRESIDING OFFICER. The Senator from Kansas asks unanimous consent that when the Senate concludes its business to-day, it take a recess until 10 o'clock Monday morning. In the absence of objection, it is so ordered.

CALL OF THE ROLL.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Brandegee	Harris	New	Shortridge
Brookhart	Harrison	Norbeck	Smoot
Broussard	Heflin	Norris	Spencer
Cameron	Jones, N. Mex.	Overman	Sterling
Capper	Jones, Wash.	Page	Sutherland
Caraway	Kellogg	Pepper	Townsend
Curtis	Lodge	Phipps	Underwood
Fernald	McKellar	Pomerene	Walsh, Mont.
Fletcher	McKinley	Ransdell	Warren
George	McLean	Reed, Mo.	Watson
Glass	McNary	Reed, Pa.	Willis
Gooding	Myers	Robinson	
Harreld	Nelson	Sheppard	

The PRESIDING OFFICER. Fifty Senators having answered to their names, a quorum is present.

FUNERAL OF REPRESENTATIVE JAMES R. MANN.

Mr. LODGE. Mr. President, I move that the Senate take a recess to fulfill its acceptance of the invitation of the House to be present at the funeral of Representative MANN.

The motion was agreed to.

The PRESIDING OFFICER. The Senate stands in recess, in accordance with the motion just carried, to attend the funeral of the late Representative MANN.

The Senate, preceded by the Sergeant at Arms, the Vice President, and the Secretary, proceeded to the Hall of the House of Representatives.

The Senate returned to its Chamber at 2 o'clock and 45 minutes p. m., and the Vice President resumed the chair.

RECESS.

Mr. LODGE. I move that the Senate take a recess, as heretofore ordered, until 10 o'clock on Monday next.

The motion was agreed to; and the Senate (at 2 o'clock and 45 minutes p. m.) took a recess, the recess being, under the order previously made, until Monday, December 4, 1922, at 10 o'clock a. m.